



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS
Department of Planning and Development
Michael J. Kruse, Director

Telephone
(617)-796-1120
Telefax
(617) 796-1142
E-mail
mkruse@ci.newton.ma.us

Public Hearing Date:	January 13, 2005
Land Use Action Date:	March 8, 2005
Board of Aldermen Action Date:	March 21, 2005
90-Day Expiration Date:	April 13, 2005

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radzevich, Chief Planner
Eric Jerman, Senior Planner

SUBJECT: #471-04 ELEANOR BELLI, PRESIDENT, AMERICAN BUILDING SUPPLY petition for an AMENDMENT to SPECIAL PERMIT #278-90, granted in August, 1990 (for an extension of retail sales into an already constructed 3,950 portion of the existing building) to allow for, in the alternative, the entire space covered by that special permit to be used for either retail or service business, or to allow the use of approximately 1,330 sf of that retail space as a service business tanning salon; to allow an existing retail food sales operation to have not more than 18 seats, where nine had previously been approved, and to change a non-conforming use to allow for an 18-seat restaurant, in the event that the existing retail food sales is determined to qualify as a restaurant; and a parking waiver at 199-303 NORTH STREET, Ward 3, on land known as Sec 21, Blk 12, Lot 11, containing approx. 25,291 sf of land in a district zoned MANUFACTURING.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. ELEMENTS OF THE PETITION

In 1990, the Board of Aldermen granted a special permit for this site approving the introduction of a nonconforming retail use and authorizing the conversion of office space to retail use. (Board Order #278-90)

The petitioner is seeking an amendment to Board Order #278-90 that has four principal elements. First, the petitioner is requesting an extension of a nonconforming use for all of Spaces A-D, as defined on the submitted plans (North Street Offices, First Floor Plan, revised 6-12-90). Secondly, if the Board does not want to grant the extension to all of Spaces A-D, the petitioner is asking for the extension of a non-conforming use for approximately 1,327.5 sq. ft in store Space C and part of store Space D, to allow a service establishment (tanning salon). Third, the petitioner is asking for an alteration and extension of a non-conforming use to allow an increase in seating, from 9 to 18 for the existing retail food establishment ("Wing House."), and to change this to a "restaurant" use. Finally, based on the proposed and current uses, the petitioner will need a waiver from the required number of parking spaces.

It should be noted that the "Wing House" has been operating with 18 seats for several months. The owner believed that it was legal to do so because the City's Licensing Board approved 19 seats for the retail food establishment in 2001, and, possibly earlier, when the business in store Space A was called "Riverside Deli." It is not clear why the Licensing Board approved the additional seats, as Inspectional Services records indicate that a retail food establishment with 9 seats maximum was approved for this location on 10/5/92 by then Zoning Administrator Harold Hewett.

When this request for special permit was filed, the petitioner had indicated the site had not changed from the site plan approved by the Board in 1990. In order to save the petitioner the expense of what appeared to be an unnecessary survey, the Chief Zoning Code Official and the Planning Department suggested that the petitioner submit a letter from a licensed surveyor attesting that the current site was consistent with that approved plan, which was to be re-filed with this petition.

Although a surveyor has submitted a letter that the site is consistent with the approved and resubmitted plan (See Attachment "A"), the Planning Department's site visits reveal that there are noticeable discrepancies between the site plan filed with this petition, which is also the prior approved plan, and what is currently constructed on the site. These discrepancies include:

- ***30 rather than 31 parking stalls are located in the designated parking facility;***
- ***reduced widths of parking stalls, especially the two handicapped accessible stalls;***
- ***the "planting bed" areas along Farwell Street have been paved and this area is being used for parking (there is a sign mounted on the building that states: "Customer Parking Only");***
- ***at least two light posts appear to be missing from the site and relocated to the building façade;***
- ***at least one parking stall is located within a striped "fire lane;" and***
- ***Missing concrete sidewalk in front of south building.***

The Planning Department has advised the petitioner that the site plan filed with the request for special permit is inaccurate, and that a new survey must be filed as soon as possible.

II. **ZONING RELIEF BEING SOUGHT**

The petitioner is seeking relief from or approvals through the following section(s) of the Zoning Ordinance:

- *Section 30-21(b) which allows the Board of Aldermen to grant a special permit to extend a nonconforming use. The Chief Zoning Code Official has determined in his memo (see “Attachment B”) that the petitioner requires approval under Section 30-21(b) for three separate instances:*
 1. *To allow for a service establishment (tanning salon) use in store Space C and in part of store Space D (as defined on the submitted North Street Offices, First Floor Plan);*
 2. *To allow for service establishments for Spaces A-D (as defined on the submitted plans); and*
 3. *To allow for the alteration and extension of the existing retail food establishment use, for additional seats, and for reclassification as a “restaurant” in Space A.*
- *Section 30-19(m) of the Zoning Ordinance, which allows the Board of Aldermen to grant a special permit to allow for exceptions to the dimensional requirements for parking if it is determined that compliance is impracticable due to the nature of the site and that such exceptions would be in the public interest. The following waivers are required through this section:*
 1. *Section 30-19(d)(10), which requires one parking stall for each 300 square feet for use in any retail store or service establishment, plus one stall for each three employees on the largest shift. The Chief Zoning Code Official has determined in his memo (see “Attachment B”) that the proposed new service use, together with existing uses, and potential future use of existing rentable area may require up to 38 spaces overall; this exceeds the 31 spaces shown on the approved plan.*
 2. *Section 30-19(c)(2)(b), which requires that, in the case of a change in use of restaurants, the number of off-street parking stalls which would be required for the new use or uses shall be determined by the existing floor area of the existing structure and not the seating capacity thereof. When such building is located in a Manufacturing district, the number of off-street parking stalls which would have been required for such building prior to the date of the change of use (“B” of the formula set forth above), shall be calculated under subparagraph 30-19(d)(10).*
 3. *Section 30-19(d)(13), which requires one parking stall for each three seats, permanent or otherwise, for patron use of restaurants and one parking stall for each three employees to be employed on the largest shift.*
- *Section 30-23 for Site Plan Approval; and*
- *Section 30-24(d) for Special Permit Approval. The Chief Zoning Code Official has determined in his memo (see “Attachment B”) that the petitioner requires relief under Section 30-24(d) for approval for two new nonconforming uses, and for amendment of prior Board Order #278-90.*

The petitioner is also seeking an amendment of an existing Special Permit and Site Plan (Board Order #278-90).

III. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board should consider the following significant issues:

- *Whether allowing service uses in a Manufacturing district will have adverse affects on the abutters or the immediate neighborhood, and/or will be consistent with the existing uses in this area;*
- *Whether with increase in allowed seats, from 9 to 18, will impact the site and/or neighborhood, and whether this expanded use is appropriate within a Manufacturing district;*
- *Whether allowing a “restaurant use” vs. a retail food establishment in a Manufacturing district is appropriate for this site and neighborhood;*
- *Whether the requested 7 stall parking waiver will have any adverse affects on the abutters or the immediate neighborhood; and*
- *Whether the “amended site plan,” with the current site conditions (based on new surveyor plan to be filed by petitioner) is better than the previously approved site plan.*

IV. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The site, located at the corner of North Street and Farwell Street, is a rectangular-shaped lot with an area of 25,291 sq. ft. There is a curb cut (enter-only) access to the parking facility from Farwell Street and a second curb cut (enter and exit) from North Street. The paved area along Farwell Street (*shown as “planting beds” on the approved plans*) does not include any curb cuts; this area is mostly covered with asphalt from the building to the street. As can be seen in the photo (*see photo #1, on next page*) there is a small area of planted shrubs.

This paved parking area along the north side of the building, just off Farwell Street, is not shown on the submitted or approved plans, and appears to be a violation of the existing Board Order #278-90. The approved plans for Board Order #278-90 indicate that this should be a grassed area of approximately 1,131 sq. feet with two trees.



Photo #1: View of north side of existing building from Farwell Street.
Vehicle is parked on paved surface.



Photo #2: "L"-shaped building at 199-303 North Street (A.K.A. 7 Farwell Street). On right side of image is the south building (indicated on submitted plans as "New Addition") that was constructed more recently (as part of Board Order #278-90) than the north building (left side of image). The south building contains four bays for separate businesses.

B. Neighborhood

The subject site is located within a small Manufacturing district, which includes a variety of commercial uses, an abutting restaurant (Fiorella's), a natural gas supplier and two manufacturing uses. The Calvary Cemetery and some single- and multi-family residences are across North Street, to the west. Beyond this Manufacturing district, to the east, is a small Limited Manufacturing district, and to east and south is a Multi Residence 2 district.

The subject property is located approximately 300 feet south of the Charles River and approximately 150 ft. south of the Waltham city limits.

V. ANALYSIS

A. Technical Considerations

The petitioner does not propose any changes to the building. There are no lot coverage or open space requirements in the Manufacturing district.

B. Traffic/Parking Analysis

The following table compares the approved and current site with the parking requirement of the Zoning Ordinance and/or the requirements established in Board Order #278-90:

	Required	Existing – per site visits	Proposed – per site plan
Minimum number of spaces	Up to 38	30 + 4-5 along Farwell St.	30 (site) or 31 (on plans) or up to 35 with spaces along Farwell
Setback for parking facilities	5' minimum	0'	Not Clear
# of handicapped parking stalls	2 stalls	2 stalls	2 stalls
off street loading stall	1 stall	1 stall	1 stall
Minimum width of maneuvering aisles	20'	19'	19'

As shown in the table above, the petitioner will need a waiver from the number of parking stalls, if they intend to restore the site to reflect the prior approved and submitted plan. If the petitioner wants to maintain the parking area along Farwell Street, they will likely need waivers from the setback requirements and possibly the parking stall dimensional requirements. It is not clear how many spaces could fit in this paved area, as such the Planning Department is not sure if a waiver from the number of spaces would be necessary if they intended to keep the parking area along Farwell Street. ***The Planning Department cannot complete a review of the parking waivers without an accurate, dimensioned site plan showing current site conditions, and new proposed site plan, if it deviates from the prior approved and submitted site plan.***

In his memo dated December 14, 2004, the Chief Zoning Code Official (CZCO) has determined the need for parking waivers based upon three separate scenarios (see "Attachment B"). It is important to note, the CZCO's zoning determination is based on the submitted (and prior approved) site plan, it does not take into account the paved

parking area along Farwell Street. The requirements for calculating parking demand for service uses is the same as for retail uses.

The Planning Department has prepared a table in an effort to clarify the CZCO's memo (see "***Attachment C***"). In Scenario 1, a parking waiver would be required for five (5) spaces if the "Wing House" remains a retail pick up operation with only 9 seats, and the rear ½ of Space D is considered a potential future retail/service use. Scenario 2 is different only in that the rear ½ of Space D is considered a permanent storage area only, not to be used for retail/service uses, and a parking waiver would be required for one (1) space. In Scenario 3, a parking waiver would be required for seven (7) spaces if the "Wing House" is allowed to have 18 seats (and is considered a "restaurant use"), and the rear ½ of Space D is calculated as a retail/service area. *Note, the "Wing House" has already installed 18 seats and has been operating this way for several months.*

The Planning Department does not believe that the parking facility was developed in accordance with the prior approved and submitted plan, which includes a total of 31 parking spaces. The City's Transportation Planner recently counted a total of only 30 parking spaces during a site visit, including three marked as "reserved", two handi-accessible parking spaces, and one space completely covered in snow. In the row of parking adjacent to the building supply store, on the south side of the parking lot, there are a total of seven parking spaces (six are shown on the site plan). Of these spaces, one space is located partially within the fire lane. Although he did not field measure the spaces, the Transportation Planner believes that the two accessible parking spaces appear to be less than the 12-foot width that is delineated on the submitted plans.

As previously noted, the area along the Farwell Street side of the building has been paved. Along this parking area, posted signs state "Customer Parking Only", and although there is no striping for parking stalls, vehicles were observed parked in this area. The prior approved and submitted site plan indicates a planting bed and sidewalk in this area.

The petitioner's attorney has stated that the main parking facility is under utilized, and as such a parking waiver would not result in a deficiency based on demand. Further, he notes that a portion of the waiver is for the additional seats, which already exist. The Planning Department expressed concern as to whether the underutilization is based on the types of actual users of the site and the fact that more than half of the south building is currently vacant, or whether the parking lot is underutilized because of the additional parking area along Farwell Street, or both.

Prior to the close of the Public Hearing, the Planning Department recommends that the petitioner provide data on the number of vehicles being parked on-site currently, (in the lot and in the area along Farwell Street) during peak times, as well as the projected increase in parking demand once the building is fully occupied.

With respect to the paved area along Farwell Street, the Planning Department believes that this area should not be used as parking, since some parked cars may be partially in the public right-of-way, and all are certainly within the 5' setback required for parking

facilities. Further, the vehicles which do park here must back out on to Farwell Street. ***The Planning Department recommends that the planted area should be restored, as shown on the approved Site Plan (ref: Board Order #278-90).***

C. Land Use

The subject site is located within a Manufacturing district; however, the Board granted a Special Permit (Board Order #278-90) to allow for an extension of a non-conforming use for a retail use and authorized the conversion of office space to retail use. The petitioner is seeking approval to allow for the further extension of a nonconforming use, for service uses, in the south section of the existing building, for all Spaces A-D. However, if this is not approved, then the petitioner seeks, alternatively, approval to allow a service use—a tanning salon—in an approximately 1,327.5 sq. ft. portion of the building, referred to as “Space C” and part of “Space D” on submitted plans.

Additionally, the petitioner is seeking to increase the seating capacity of an existing take out retail food establishment (“Wing House”) from 9 to 18 seats. In his Zoning Determination, the Chief Zoning Code Official (*see “Attachment B”*) has indicated that an increase to 18 seats “indicat[es] that the initial retail food establishment is becoming similar to a restaurant.” Therefore, the expansion to a restaurant use would be an additional change of a nonconforming use.

D. Building and/or Site Design

The existing 1-story structure is “L” shaped and consists of two separate rectangular buildings that were constructed more than fifteen years ago. The concrete block structure has a gradual pitched roof and asphalt shingles.

Occupancy of Existing Buildings	
“NORTH” BUILDING	
1. American Building Supply	Existing
2. Color Works	Existing
“SOUTH” BUILDING	
3. Space A. Wing House	Existing
4. Space B.	Vacant
5. Space C and part of Space D. Tanning Salon	Proposed
6. part of Space D. Storage space for American Building Supply	Existing

As can be seen from the above table, there are two businesses operating out of the North building, American Building Supply, and Color Works (a retail automotive paint supply store). The south building is constructed with 4 separate business spaces. Space “A” is currently occupied with an existing take out operation, *Wing House*. Space “B” is currently vacant. Space “C” and part of Space “D” is the proposed location for a tanning salon. The rear portion of Space “D” is currently used for storage of boxes for American Building Supply.

As previously mentioned, an area along Farwell Street that is shown on the prior approved and submitted plans has been paved. The Planning Department recommends

that this area be planted as shown on the prior approved plan. Submitted plans also indicate a concrete sidewalk in front of the south building that has not been constructed. The Planning Department recommends that this concrete sidewalk be constructed as delineated on the submitted plans. Additionally at least two light posts are missing from the site, and have been relocated to the building façade. ***Prior to the Working Session, the petitioner should submit a photometric plan showing the light levels under the current, as opposed to the approved, lighting configuration.***

E. Department Reviews

The City Engineer is expected to submit his review prior to the Public Hearing.

F. Signs

Board Order #278-90 approved one free-standing sign for this site, located adjacent to North Street. On a recent site visit, the Planning Department noted an additional temporary sign, located adjacent to North Street that reads, “The Wing House.” (*see photo #3, below*) The Planning Department notes that the second sign must either be removed or the petitioner must request a further amendment to the existing Special Permit (Board Order #278-90) and request a second free-standing sign.



Photo #3: Existing free-standing sign to the right of image.

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible

The Planning Department is concerned about the number of changes to the parking facilities and site in general. The paved area along Farwell Street, which allows for parking, is an open area with no curb cuts; cars must back out onto the

street. Also, it is not clear as to whether these cars are all parked on the subject property or if they extend into the public right-of-way. The sidewalk on the prior approved plan does not exist on site.

The Planning Department is also concerned that the existing parking facility includes parking stalls over the fire lane and, what appear to be insufficiently-wide handicap stalls.

The Planning Department recommends that the site be restored to match the approved plans prior to an occupancy permit being issued for the tanning salon. In addition, the petitioner should restore the sidewalk, to allow for clear pedestrian access to the building.

2. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

As mentioned earlier, the Planning Department believes that the planting area should be restored, as the presence of grass and trees should help to break up the large area of hardscape in an area that is visible to residences.

H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use, structure

The Planning Department believes that given the combination of service, retail, and industrial uses in the surrounding neighborhood, the introduction of the tanning salon use may be appropriate for this site. The Planning Department is concerned about the Board granting a blanket extension of the non-conforming service uses, particularly without having a clear understanding of the current and proposed future parking demands.

The Planning Department believes that due to the fact that the Wing House take out food operation has been in business at this location for several years, and apparently has already been operating with the additional seats, the approval of these additional seats may not be an issue. *However, the Planning Department can not accurately assess what impacts this approval may have without having the current and anticipated parking demand information.*

The Planning Department is also concerned that if the Board were to approve this as a "restaurant," vs. a food service establishment, in the future another type of restaurant with a higher parking demand could possibly occupy this space. The Planning Department believes that the parking demands for a sit-down restaurant is different from the current take-out, limited menu food service establishment.

2. The use as developed and operated will not adversely affect the neighborhood.

The Planning Department believes that the proposed introduction of service uses and the increase of seating at the Wing House, from 9 to 18 seats should not adversely affect the surrounding neighborhood. (See Section V.H.1) However,

the Planning Department does believe that the excessive pavement on-site, particularly along Farwell Street, *does* adversely affect the neighborhood and streetscape.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The Planning Department believes that, provided that there is adequate parking for the different retail, service, and restaurant uses on this site, the increase in seating from 9 to 18 seats for the Wing House restaurant and the introduction of service uses, such as a tanning salon, should not pose a nuisance or serious hazard to vehicles or pedestrians. ***However, as previously mentioned, the Planning Department does not have enough information to evaluate whether there is sufficient parking on site to accommodate all of the proposed uses, nor does the Planning Department know how many spaces are actually on site.***

4. Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved;

The site has two existing curb cuts, one is an enter-only access from Farwell Street, and the second is an enter/exit access from North Street. There will be no change to the curb cuts or how the site is accessed as a result of the proposed expansion to allow service use of the south building or in the expansion to a restaurant use for the Wing House.

VI. SUMMARY

The current petition seeks to amend Board Order #278-90 to change a nonconforming use to allow service uses in an existing building, or, in the alternative, to allow a service use—a tanning salon—in approximately 1,327.5 sq. ft. of an existing building. In addition, the petitioner seeks to change a nonconforming use to allow an existing retail food sales operation to expand from 9 to 18 seats, which the Chief Zoning Code Official indicates would then be more like a “restaurant” use, and perhaps necessitates a further extension of a non-conforming use. Depending on which, if any, of these aspects of the petition that the Board approves, and how many spaces are or will be on site, the petitioner may also need a parking waiver for up to 7 spaces.

Although the petitioner initially indicated that nothing had changed on the site, the current site conditions are not accurately reflected on the submitted site plan, even though a surveyor submitted a letter stating that the current conditions are consistent with the submitted and approved site plan.

Further, it is not clear whether the petitioner wants or needs the additional parking spaces that have been created along Farwell Street. Without knowing what the petitioner proposes, in terms of number of spaces, and how many vehicles currently park in each of the parking areas, the Planning Department can not complete its analysis of this petition.

Because the Land Use Committee and interested members of the public will not have had sufficient information on the scope of the project, and will not be able to understand the potential impacts, the Planning Department recommends that either this petition be withdrawn

and refiled with all appropriate plans and information, or that the public hearing be opened and immediately continued to a date uncertain.

In order to complete the review of this petition, the petitioner should be expected to submit the following:

- *An existing surveyed site plan;*
- *A proposed site plan;*
- *If the petitioner proposes to maintain the parking area on Farwell Street, the proposed site plan must include dimensioned and delineated parking stalls on the plan, as well as all additional waivers that may be necessary for that parking area;*
- *An updated photometric plan reflecting the proposed lighting configuration;*
- *An updated landscape plan, if the petitioner intends to plant anything different than what was shown on the prior approved and submitted plan;*
- *Data on the number of vehicles parked in each parking space, during peak times, along with the projected parking demand for the entire building, once all the vacant spaces are occupied; and*
- *Updated drainage calculations, for the additional paved area, if the existing drainage system was not designed to accommodate the additional impervious surface.*

If the Committee prefers to open and continue the hearing, the Planning Department recommends that the date for the continuation of this public hearing be set after the petitioner has submitted the appropriate plans and information on the existing and proposed parking numbers and configuration and the staff has had sufficient time to review this information and provide a complete technical analysis for the Committee and interested members of the public.